

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2003

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION NO.40778 of 2002

C.Jancy (Minor)
rep., by her Father N.Chinna
Nadar, North Street,
Neyyoor-629 802,
Kanya Kumari District. .. Petitioner

-Vs-

1.The Director of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.

2.The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.

3.The Principal,
College of Nursing,
Sree Ramakrishna Institute of
Paramedical Sciences,
395, Sarojini Naidu Road,
Sidhapudur, Coimbatore-641 044.

4.The TN Dr.MGR Medical University,
Guindy, Chennai rep., by its
Registrar. .. Respondents

Writ petition filed under Article 226 of the Constitution of
India praying for the issue of a Writ of Mandamus for the reasons stated
therein.

For petitioner : Mr.Isaac Mohanlal

For respondents-1 & 2 : Mr.V.R.Rajasekaran,
Special Govt. Pleader.

For respondent-3 : Mr.Sathis Parasaran

:O R D E R

The petitioner seeks for the issue of a Writ of Mandamus to direct the respondents 1 and 2 to admit the petitioner in B.Sc.,(Nursing) Course 2002-2003 Session under Free Seat Category in any Government or other recognised institution to direct the respondents to admit the petitioner in the third respondent institution on the basis of the selection and allotment made by the second respondent Selection Committee dated 31.10.2002 and to allow the petitioner to undergo the said course.

2. The petitioner claiming to have successfully completed the higher secondary course appeared for the Tamil Nadu Professional Courses Entrance Examination-2002. She belongs to backward class and obtained 41.99 out of B.Sc. (Nursing) course 2002-2003. The second respondent Selection Committee is the competent authority to select and allot candidates to the said course and according to the prospectus, the selection of candidates will be made on the basis of marks obtained by the eligible candidates in the prescribed Science subjects and the marks obtained in the entrance examination. The petitioner had obtained 138.50 marks in the Science subjects and 41.99 marks in the entrance examination and hence has scored a total of 180.49 out of 300 marks. In terms of the prospectus, after the merit list of the candidates is prepared, the rule of reservation will be followed and the candidates will be invited for counselling to be allotted to the various categories through Single Window System. The candidates can also exercise their option for the course and the college of their own choice at the time of counselling. Accordingly, the merit list was published and the petitioner attended the counselling and opted for free seat. The petitioner was placed at rank No.577 in B.C. Free Wait List. She was awaiting intimation from the Selection Committee. On 14.10.2002, she came to understand that several candidates who had secured lesser marks than the petitioner had been allotted free seats from 10th to 12th of October 2002. On 15.10.2002, the petitioner took a bank demand draft for Rs.6,000/- (Rupees six thousand only) and approached the selection committee on the next day. She was orally informed that a further counselling would be held on 28.10.2002 for allotment from the remaining waiting list. As there was no intimation, she again approached on 29.10.2002. She was asked to wait till 30.10.2002. The petitioner was told that she could not be given free seat but only a payment seat in the third respondent institution. Being left with no option, the petitioner accepted the same and waited for the allotment. Since 31.10.2002 was the last date for joining the institution, she left for Coimbatore on 30.10.2002 itself, leaving her brother at Chennai to receive the allotment order. On 31.10.2002 at about 10.30 A.M., the petitioner's brother remitted Rs.34,000/- (Rupees thirty four thousand only) by way of two demand drafts towards fee for payment seat and obtained allotment orders from the Selection Committee, one addressed to the institution and the other addressed to the petitioner.

3. The petitioner soon after receiving orders through fax reported to the third respondent at about 3.30 P.M. on 31.10.2002 with her original certificates and the admission fee. However, the Principal refused to admit and admission was over. Again on the next day, the petitioner approached the third respondent at about 10.00

A.M. and pleaded for admission and the petitioner was again refused. Thereafter, the petitioner sent a telegram to the second and third respondents informing them about the position and requesting for admission. There was no response and hence the writ petition.

4. In the counter filed by the second respondent, it is contended that the petitioner was called for counselling on 16.8.2002 and she was offered a seat under payment category available at that point of time. She opted and was placed in the waiting list for free seat category and her rank in the waiting list was 2054 in Government O.C. It is further stated that some of the seats became vacant due to non joining of some of the selected candidates. Therefore the Selection Committee again conducted a counselling and allotted candidates as per the waiting list. As on 28.10.2002, as against free seats for the backward community, the cut off mark was 222.50. Therefore, the petitioner who had secured only 180.49 was not coming within the purview of the cut off marks. The contention of the petitioner that candidates who had secured lesser marks than the petitioner had been selected was without any basis. On 29.10.2002, the petitioner contacted the second respondent only after the completion of the last counselling on 28.10.2002. She was also informed that she was not eligible for allotment under free seat category. Again on 31.10.2002, the petitioner contacted the Selection Committee and made a written request for allotment of seat in payment category in Sri Ramakrishna College of Nursing, Coimbatore, the third respondent. She has also given an undertaking to the effect that she has taken the allotment order at her own risk and that if the management failed to admit her, she will not claim any allotment in other colleges since the counselling will be over by 31.10.2002. Now it is reported that the third respondent College has not admitted the petitioner.

5. The second respondent contends that the petitioner was not eligible to seek admission in Government College under free seat category for the reason that she has secured only 180.49 marks which is less than the petitioner had already opted for the payment seat and she was offered a payment seat only on her request on 31.10.2002. Therefore, she is not entitled to the allotment of a seat under any category as a matter of right. The Selection Committee is not empowered to make any allotment beyond 31.10.2002. Even assuming that there are some seats vacant in the self financing colleges, any seat which remains vacant after 31.10.2002 will be filled up only by the concerned management treating the same as lapsed seats.

6. Above writ petition was admitted on 11.11.2002 and in WPMP No.60413 of 2002, this Court gave interim directions to keep one seat vacant until further orders. Subsequently, by virtue of WPMP No.64379 of 2002, the court issued interim orders, directing the respondents to give provisional admission pending disposal of the main writ petition. In the affidavit in support of the said petition, the petitioner had cited a specific case one of the candidates who have been given admission into free seats despite less marks, namely R.Muthamizh. She belongs to backward class and she has secured only 157.41 and has been given a free seat on 12.10.2002 by the

second respondent. The said student was studying in the first year B. Sc.(Nursing) in Sharmila College of Nursing, Chennai under free seat category. Therefore the denial of free seat to the petitioner in spite of her higher marks was highly arbitrary and discriminatory. She would further submit that the classes for the year 2002-2003 have already commenced and the petitioner had already remitted Rs.34,000/- towards the tuition fee for the course.

7. On this issue, even though sufficient opportunity was given to the official/respondents, by adjourning the hearing, the respondents have not filed any counter denying the said allegation. Though the general allegation that several had obtained marks lesser than the petitioner had been admitted into other institutions as against free seats had been denied the respondents, however, the specific allegation that one R. Muthamizh belonging to backward class who had secured only 157.41 had been granted a free seat on 12.10.2002 has not been denied by the respondents, either by filing a counter or by producing the file in spite of adjourning the hearing on more than two or three occasions.

8. Therefore, I am inclined to hold that the allegation is uncontroverted and hence petitioner is entitled to be admitted as against free seat. The said candidate R. Muthamizh had secured only 157.41 marks as against . Therefore, I have no hesitation in holding that the denial of admission to the petitioner has to be held as illegal and arbitrary. It is rather shocking and surprising that a candidate who secured only 157.41 marks could have been admitted even though it is claimed that in respect of backward class, the cut off marks for the free seat category was 222.50. It is rather unfortunate that such manipulations are shown to prevail while everyone is under the impression that in professional courses admissions are complied with only in accordance with the merit list subject to reservations. The petitioner in her first affidavit had specifically averred that several candidates who had secured lesser marks had been admitted against Free Seat Category from 10th to 12th of October, 2002. Though this was denied in the counter, now after the petitioner had come forward with specific instance, the respondents are unable to deny the same. This Court can only express hope that the higher authorities would take serious note of this episode and take action against the concerned individuals failing which public are bound to lose faith in the selection process to professional courses. The difference between the marks secured by the selected candidate (157.41) and of the petitioner (180.49) is shocking and cannot be certainly due to any mistake by oversight. The public are under the impression that such manipulations are not possible.

9. Therefore, the petitioner is entitled to succeed on that ground alone and the writ petition requires to be allowed. Though the third respondent has been served, no counter has been filed.

10. With the result, the above writ petition is allowed. Respondents 1 and 2 are directed to admit the petitioner in the course as sought for by her as against the free seat in any of the Government colleges or in any non free seat category. Considering that the

petitioner had been allotted the third respondent institution, it is open to the respondents 1 and 2 to direct the third respondent to admit the petitioner in their institution as against free seat, in the event of there being no vacancy in any of the Government colleges. It is made clear that the petitioner has to be accommodated in a government or a private college as against free seat. This should be complied with by increasing the number of free seat by one more seat in order to accommodate the petitioner. The amount paid by the petitioner, if any, towards the payment category shall be refunded to the petitioner after deducting the fee payable for free seat category. This order shall be complied within a period of two weeks considering the period of academic year.

11. The writ petition is ordered as above. No costs. Consequently, connected WPMPs 60413 and 64379 of 2002 are closed.

Index : Yes.

Internet: Yes.

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To

1.The Director of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.

2.The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.

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